

REMARKS

Claims 9 and 11-19 are all the claims pending in the application. Claim 9 has been amended to incorporate the recitation of claim 10, and claim 10 has been canceled, accordingly.

Entry of the amendment is requested, respectfully.

A. Claim Rejections - Double Patenting

The Examiner issues a provisional nonstatutory double patenting rejection over claims 1, 2, 4, 5 and 7-12 of co-pending application No. 12/182,772.

The Examiner is requested to hold this rejection in abeyance, because on October 19, 2010, USAN 12/182,772 will become abandoned as of July 19, 2010.

B. Claim Rejections - 35 U.S.C. § 103

Claims 9-11, 18 and 19 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Leitz *et al.* (4,877,627).

The Examiner's position is that Leitz *et al.* teaches that soluble dietary fiber is associated with a reduction of lipoproteins, serum cholesterol and glucose intolerance. The Examiner views the teaching of reduction of glucose intolerance as reading on a decrease in glucose absorption that results in elevated blood glucose. The Examiner concedes that Leitz *et al.* does not teach the active step of administering the composition to an individual in need thereof, but concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to administer the cited composition to a person in need of inhibiting elevated blood glucose levels. The Examiner further concludes that one of ordinary skill in the art would have recognized that the benefits of improved blood glucose levels can decrease the risk of insulin resistance and type II diabetes.

Initially, Applicants believe that the Examiner thinks that the acerola "pulp" used in the reference is the fruit or leaf of acerola. This understanding, however, is not correct. The term "pulp" in the technical field pertinent to the present invention is used to mean "the soft succulent portion of a fruit" as evidenced by a dictionary, McGraw-Hill Dictionary of Scientific and Technical Terms, Fifth Edition. Please see the attached copy of page 1605 of the dictionary. The Leitz document is silent about "leaf" of acerola. Those skilled in the art would not understand that the acerola "pulp" means the leaf of acerola. Thus, the basis of the Examiner's position is not correct.

Thus, Leitz *et al.* does not teach the use of acerola leaf extract or a processed product thereof. Rather Leitz *et al.* only teaches the use of a nutritional high fiber composition, of which only 30 to 48.5% is fiber derived from fruit and vegetable groups, wherein at least one of the fibers from the fruit and vegetable groups is selected from the group consisting of lemon, acerola and carrot. The current claims recite the use of acerola leaf extract, which is composed of more than soluble fibers. Leitz *et al.* also does not teach the use of products that comprise polyphenols, as now recited in claim 9. Therefore, Leitz *et al.* can not be said to motivate one of ordinary skill in the art to use acerola leaf extract to inhibit blood glucose level elevation. Rather, in order to obtain this element of the present claims, the Examiner, relies on hindsight. That is, only by reference to the present specification can the Examiner state that acerola leaf extract should inhibit blood glucose level elevation. Leitz *et al.* does not in any way teach or suggest inhibiting blood glucose level elevation using acerola leaf extract.

In view of the above remarks and amendments to the claims, the Examiner is requested, respectfully, to reconsider and remove this rejection.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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Editor in Chief

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